

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (the “Agreement”) is entered into this ____ day of _____, 2015, between Hunt Midwest Real Estate Development, Inc. (the “Applicant”) and the City of Overland Park, Kansas (the “City”).

RECITALS

- A. The City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas and authorized by certain statutory provisions to provide financial incentives for qualified development projects.
- B. The Applicant is a Missouri corporation and the developer of certain real property generally located at the southeast corner of Marty Street and West 80th Street within the City, as more particularly described in Exhibit A attached hereto (the “Site”).
- C. The Applicant has requested that the City review and analyze Applicant’s request (the “Request”) to consider the use of certain financial incentives for economic development projects on the Site.
- D. In order to grant the Applicant’s Request, the City must retain administrative and professional staff, outside counsel and consultants, and incur expenses, and the City requires that the Applicant pay and reimburse the City for the payment of such reasonably incurred costs. The City therefore requires that the Applicant deposit funds with the City to be used by the City to pay for actual out-of-pocket expenses necessary to perform a full evaluation of the Request and engage consultants as needed for such evaluation and to provide services described in Section 2 of this Agreement. If the Request is approved, the City will continue to incur similar costs and expenses to represent the City’s interests in documenting and implementing the various aspects of the Request, and other related tasks, documents and issues.
- E. By execution of this Agreement, the Applicant is asking the City to retain outside counsel and consultants in order to evaluate, consider and, if approved, to implement the Request. The Applicant agrees, represents and warrants that any information provided to the City in its evaluation of the Request shall be accurate and complete to the best knowledge of the manager or member of the Applicant providing such information.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

1. **Recitals.**

The recitals set forth above are hereby incorporated as though more fully set forth herein.

2. **Services to be performed by the City.**

The City shall retain administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its sole discretion, deems necessary to:

(a) Consider the Applicant's Request for use of economic development incentive tools permitted by Kansas Statute ("Incentives"), including but not limited to tax increment financing.

(b) If approved by the Governing Body, permit the use of any of the requested Incentives for the project at the Site; establish the appropriate districts; give all appropriate notices; make all publications; prepare or review any relevant plans, studies and/or analyses necessary or appropriate in connection with the establishment of the districts and/or use of the Incentives; hold all hearings; prepare the required resolutions and ordinances; and take any further action required to comply with the Kansas Statutes.

(b) If approved by the Governing Body, prepare and negotiate a development agreement between the parties for use of any Incentives at the project Site.

(d) If approved by the Governing Body, implement the various aspects of the Request.

The Applicant acknowledges that, in this case, at its request the City has retained outside counsel and incurred expenses prior to the execution of this Funding Agreement. Applicant agrees to pay the City for all the fees and expenses incurred.

3. **Payment.**

The Applicant shall pay the City for its fees and expenses; the time of its administrative and professional staff, as the City may from time to time deem appropriate; all charges for the City's outside counsel and consultants; and all other expenses incurred by the City in providing the services set forth in **Section 2** (the "Charges"), subject to the following conditions:

(a) In order to ensure the prompt and timely payment of the Charges, the Applicant shall establish a fund (the "Fund") by paying the initial amount of Fifteen Thousand and 00/100 dollars (\$15,000.00) to the City contemporaneous with the execution of this Agreement. Thereafter, the City shall pay all Charges from moneys on deposit in the Fund and shall provide an itemized statement thereof to the Applicant on a monthly basis. If, in the judgment of the City, there are insufficient amounts on deposit in the Fund to pay for the projected Charges expected to be incurred over the next sixty (60) days, the Applicant shall make a subsequent deposit or deposits into the Fund in an amount equal to the initial deposit or such other amount which in the judgment of the City is required to provide sufficient funds to pay the projected Charges.

(b) If the amount in the Fund is insufficient to pay the outstanding Charges payable hereunder, the Applicant shall pay such Charges within twenty (20) days of receipt of a statement from the City of the amount required to pay such Charges. All statements

shall be reasonably itemized and shall be payable within twenty (20) days of receipt thereof. If not so paid, the City shall be relieved of its obligations hereunder until paid, and the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%).

(c) The City's special counsel, Stinson Leonard Street, LLP, shall be paid on an hourly basis for legal services rendered in support of the services performed by the City hereunder. The City's Bond Counsel, Kutak Rock LLP, shall be paid on an hourly basis for legal services rendered in support of the services performed by the City hereunder, other than for legal services rendered in connection with the issuance of any bonds that may be issued to finance the Incentives.

(d) Nothing in this section shall be construed to make any payments made hereunder ineligible to be reimbursed out of Incentive funds if such reimbursement is otherwise permissible based on the City's interpretation of the applicable statute.

4. Studies and Plans.

The City and the Applicant agree that the City will retain an entity to prepare any necessary studies and/or plans referenced in Section 2, above. The City and the Applicant further agree that a consultant may be retained as appropriate to provide supporting materials for any study and/or plan. The Applicant agrees to pay the cost of the study and/or plan in full, including the fees and expenses of the provider thereof and of any other firm or entity which provides supporting materials for the study and/or plan.

5. Termination.

(a) The City may terminate this Agreement upon ten (10) days written notice in the event the Applicant fails to make any payments when due.

(b) The Applicant may terminate this Agreement at any time in the event it determines not to continue to pursue the Incentives upon written notice to the City thereof.

(c) If either party terminates this Agreement, the City shall apply the balance of the Fund, if any, to outstanding Charges pursuant to this Agreement and any monies due and owing to the City pursuant to any other agreement and shall pay the remaining balance, if any, to the Applicant within thirty (30) days of such termination. In the event the balance of the Fund, if any, is insufficient to pay the outstanding Charges payable hereunder, the Applicant shall pay such Charges within thirty (30) days of receipt of a statement from the City of the balance required to pay such Charges.

6. No obligation to proceed.

The Applicant acknowledges that the City is not obligated by the execution of this Agreement to grant any portion of the Request and any and all actions are subject to the sole discretion of the Governing Body of the City and the requirements of the applicable statutes.

Specifically, the Applicant acknowledges that the City is not obligated by the execution of this Agreement to establish any districts or approve any studies or plans and acknowledges that the establishment of any districts and the approval of any studies or plans are subject to the sole discretion of the Governing Body of the City and the requirements of the applicable statute(s).

7. **Notice.**

Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if it is in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

Kristy Stallings
Deputy City Manager
City of Overland Park, Kansas
City Hall
8500 Santa Fe Drive
Overland Park, Kansas 66212

And

Tammy M. Owens
Deputy City Attorney
City of Overland Park, Kansas
Law Department
8500 Santa Fe Drive
Overland Park, Kansas 66212

With a copy to:

Todd LaSala
Stinson Leonard Street LLP
1201 Walnut, Suite 2900
Kansas City, MO 64106

And

Dorothea Riley
Kutak Rock LLP
Two Pershing Square
2300 Main Street, Suite 800
Kansas City, Missouri 64108

To the Applicant:

Hunt Midwest Real Estate Development, Inc.
8300 NE Underground Drive
Kansas City, MO 64161

With a copy to:

John Petersen
Polsinelli PC
6201 College Blvd., Ste. 500
Overland Park, KS 66221

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

7. Governing Law.

This Agreement shall be construed in accordance with the laws of the State of Kansas.

(Signatures on following page)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC.

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this ___ day of _____, 2015, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____ of **HUNT MIDWEST REAL ESTATE DEVELOPMENT, INC.**, a Missouri corporation, and that said instrument was signed and delivered on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

MY APPOINTMENT EXPIRES: _____
Notary Public
Printed Name: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach
Mayor

ATTEST:

By: _____
Marian Cook
City Clerk

APPROVED AS TO FORM:

By: _____
Tammy M. Owens
Deputy City Attorney

EXHIBIT A

The Site

Legal Description

DISTRICT LEGAL DESCRIPTION

All of Lots 1 through 9, Lots 20 through 24 and the adjoining vacated alleyway, Block 3, Overland Heights No. 2, a recorded subdivision, along with a portion of 80th Street, Floyd Street and Marty Street, as they now exist, all being in the City of Overland Park, Johnson County, Kansas and lying in the Northeast Quarter of Section 30, Township 12 South, Range 25 East, being more particularly described as follows:

COMMENCING at the Northeast corner of the Northeast Quarter of Section 30, Township 12 South, Range 25 East; thence South 02 degrees 17 minutes 31 seconds East, along the East line of said Northeast Quarter, a distance of 693.12 feet to a point on the Easterly prolongation of the South Right-of-Way line of said 80th Street; thence South 87 degrees 46 minutes 54 seconds West, departing the East line of said Northeast Quarter, and along the South Right-of-Way line of said 80th Street, and its Easterly prolongation, a distance of 301.18 feet, to the POINT OF BEGINNING, said point also being on the North line of Lot 1, Overland Heights, a subdivision in the City of Overland Park, Johnson County, Kansas; thence South 87 degrees 46 minutes 54 seconds West, along the South Right-of-Way line of said 80th Street, and along the North line of said Lot 1, Overland Heights, a distance of 30.34 feet, to the point of intersection of the South Right-of-Way line of said 80th Street and the East Right-of-Way line of said Floyd Street, said point also being the Northwest corner of said Lot 1, Overland Heights; thence South 02 degrees 14 minutes 13 seconds East, along the East Right-of-Way line of said Floyd Street and along the West line of said Lot 1, Overland Heights, a distance of 45.00 feet; thence South 87 degrees 45 minutes 47 seconds West, departing the East Right-of-Way line of said Floyd Street and the West line of said Lot 1, Overland Heights, a distance of 25.00 feet, to a point on the centerline of said Floyd Street; thence South 02 degrees 14 minutes 13 seconds East, along the centerline of said Floyd Street, a distance of 256.39 feet, to a point of curvature; thence Southerly and Southeasterly, continuing along the centerline of said Floyd Street, and along a curve to the left, having a radius of 624.40 feet and through a central angle of 30 degrees 14 minutes 15 seconds, an arc length of 329.52 feet, to a point on a non-tangent line; thence South 57 degrees 31 minutes 32 seconds West, departing the centerline of said Floyd Street, a distance of 25.00 feet, to a point on the West Right-of-Way line of said Floyd Street, said point also being on the East line of Lot 1, Overland Park Community Center, a subdivision in the City of Overland Park, Johnson County, Kansas, said point also being on a non-tangent curve; thence Northwesterly, along the West Right-of-Way line of said Floyd Street, and along the East line of said Lot 1, Overland Park Community Center, and along a curve to the right, whose initial tangent bearing is North 32 degrees 28 minutes 28 seconds West, having a radius of 649.40 feet and through a central angle of 21 degrees 21 minutes 11 seconds, an arc length of 242.02 feet, to a point on a non-tangent line, said point also being the Northeast corner of said Lot 1, Overland Park Community Center, said point also being the Southeast corner of Lot 9, Block 3 of said Overland Heights No. 2; thence South 78 degrees 21 minutes 58 seconds West, departing the West Right-of-Way line of said Floyd Street, and along the South line of said Lot 9 and along the North line of said Lot 1, Overland Park Community Center, a distance of 133.83 feet, to the Southwest corner of said Lot 9, said point also being on a non-tangent curve; thence Northerly, continuing along the North line of said Lot 1, Overland Park Community Center, and along the West line of said Lot 9, and along a curve to the right, whose initial tangent bearing is North 08 degrees 03 minutes 07

seconds West, having a radius of 651.43 feet and through a central angle of 02 degrees 28 minutes 54 seconds, an arc length of 28.22 feet, to the Southeast corner of Lot 20, Block 3 of said Overland Heights No. 2; thence South 85 degrees 13 minutes 06 seconds West, continuing along the North line of said Lot 1, Overland Park Community Center, and along the South line of said Lot 20, a distance of 131.80 feet, to the Southwest corner of said Lot 20, said point also being the Northwest corner of said Lot 1, Overland Park Community Center, said point also being on the East Right-of-Way line of said Marty Street, said point also being on a non-tangent curve; thence Southerly, along the West line of said Lot 1, Overland Park Community Center and along the East Right-of-Way line of said Marty Street and along a curve to the left, whose initial tangent bearing is South 05 degrees 01 minutes 24 seconds East, having a radius of 810.95 feet and through a central angle of 01 degrees 41 minutes 44 seconds, an arc length of 24.00 feet, to a point on a non-tangent line; thence South 83 degrees 16 minutes 51 seconds West, departing the East Right-of-Way line of said Marty Street and the West line of said Lot 1, Overland Park Community Center, a distance of 25.00 feet, to a point on the centerline of said Marty Street, said point also being on a non-tangent curve; thence Northerly, along the centerline of said Marty Street and along a curve to the right, whose initial tangent bearing is North 06 degrees 43 minutes 09 seconds West, having a radius of 835.95 feet and through a central angle of 04 degrees 30 minutes 02 seconds, an arc length of 65.67 feet, to a point of tangency; thence North 02 degrees 13 minutes 06 seconds West, continuing along the centerline of said Marty Street, a distance of 316.17 feet; thence South 87 degrees 46 minutes 54 seconds West, departing the centerline of said Marty Street, a distance of 25.00 feet, to a point on the West Right-of-Way line of said Marty Street, said point also being on the East line of Lot 2, Block 5 of said Overland Heights No. 2; thence North 02 degrees 13 minutes 06 seconds West, along the West Right-of-Way line of said Marty Street and along the East line of said Lot 2, a distance of 51.00 feet, to the Northeast corner of said Lot 2, said point also being the point of intersection of the West Right-of-Way line of said Marty Street and the South Right-of-Way line of said 80th Street; thence South 87 degrees 46 minutes 54 seconds West, along the North line of said Lot 2 and along the South Right-of-Way line of said 80th Street, a distance of 25.00 feet; thence North 02 degrees 13 minutes 06 seconds West, departing the North line of said Lot 2 and the South Right-of-Way line of said 80th Street, a distance of 50.00 feet, to a point on the North Right-of-Way line of said 80th Street, said point also being on the South line of Block 1, Resurvey of Lots 1 to 18 Inclusive in Overland Park, a subdivision in the City of Overland Park, Johnson County, Kansas; thence North 87 degrees 46 minutes 54 seconds East, along the North Right-of-Way line of said 80th Street and along the South line of Blocks 1 and 2 of said Resurvey of Lots 1 to 18 Inclusive in Overland Park, a distance of 414.35 feet, to the Southwest corner of Block 3 of said Resurvey of Lots 1 to 18 Inclusive in Overland Park, said point also being the point of intersection of the East Right-of-Way line of said Floyd Street and the North Right-of-Way line of said 80th Street; thence South 02 degrees 13 minutes 06 seconds East, departing the North Right-of-Way line of said 80th Street, a distance of 55.50 feet, to the POINT OF BEGINNING, containing 157,064 square feet or 3.6057 acres, more or less.